

East Contra Costa County Habitat Conservation Plan Association

HCPA Coordination Group Meeting

Thursday, June 19, 2003

1 p.m. to 3 p.m.

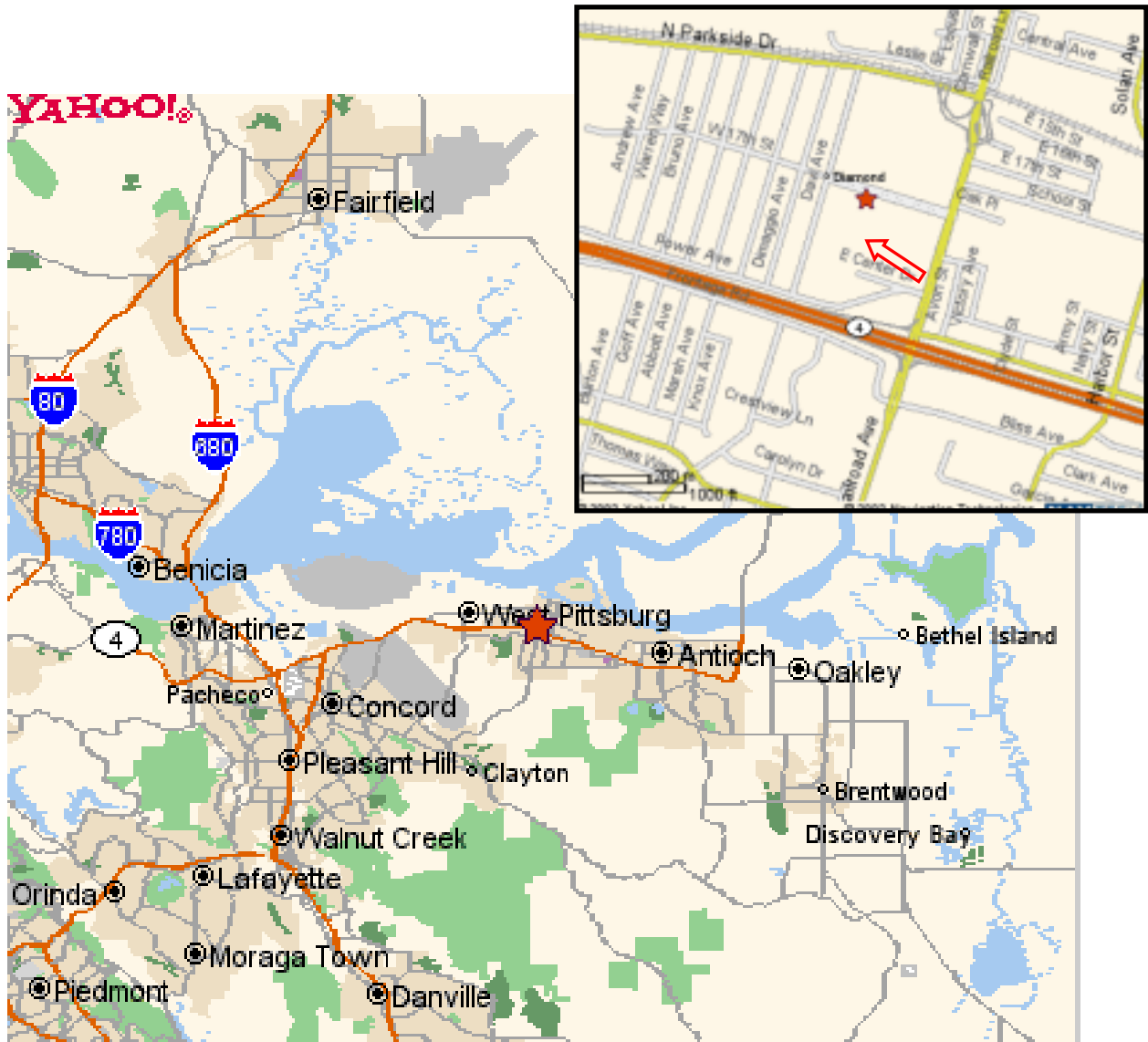
City of Pittsburg Council Chambers
65 Civic Drive in Pittsburg, 3rd Floor
(see map on reverse)

Agenda

- 1:00 Introductions. Review contents of meeting packet.
- 12:05 Review and approve Draft Meeting Record of the May 15, 2003 Coordination Group meeting.
- 12:10 Updates:
- Coordination Group Agriculture Subcommittee (see memo attached)
 - EIR/EIS Scoping Meeting July 17 at 3:30 and 7 (following Coordination Group meeting) (Notice of Preparation to be available the week of June 16, 2003)
 - Regulatory news and what it means for this effort (see memo attached)
 - Wetlands permitting update (see memo attached)
- 12:30 Review revised draft Framework document, significantly edited to reflect discussion and direction at May 15, 2003 meeting.
- 1:15 Permit area discussion, continued:
- **Criteria for a good permit area** (participants were and are encouraged to review the preliminary criteria collected earlier and to come to the meeting with specific suggested additions and edits—see earlier criteria list attached)
 - **Relation to other policies and policy discussions**
 - **Consider Flowchart/Menu for Framing permit Area Alternatives** (sent last time)
 - **Discuss and attempt to frame alternative permit area scenarios**
- 2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):
Thursday, July 17, 1 p.m. to 3 p.m. (tentative)
(Executive Governing Committee scheduled to meet June 19 at 5:30 p.m.- 7 p.m..)
- 2:55 Public comment.
- 3:00 Adjourn.

Times are approximate. If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Community Development Department at 925-335-1227.

Map and Directions to Pittsburg City Hall 65 Civic Drive



Directions from I-680, Central County

- 1) Take Hwy 4 East toward Antioch/Stockton
- 2) Follow Hwy East over the hill (Willow Pass)
- 3) Exit Railroad Ave. (the 2nd exit after the hill)
- 4) At the end of the exit ramp, turn left on Railroad Ave.
- 5) Turn left at the second intersection, East Center Drive (signs for various city offices will also point you this way)
- 6) Immediately bear right into the large parking lot next to City Hall
- 7) Meeting is on the 3rd floor

Directions from Antioch and points east

- 1) Take Hwy 4 West toward Martinez/Richmond
- 2) Exit Railroad Ave.
- 3) At the end of the exit ramp, turn right on Railroad Ave.
- 4) Turn left at the next intersection, East Center Drive (signs for various city offices will also point you this way)
- 5) Immediately bear right into the large parking lot next to City Hall
- 6) Meeting is on the 3rd floor

DRAFT MEETING RECORD

East Contra Costa County Habitat Conservation Plan Association (HCPA) Coordination Group Meeting

Thursday, May 15, 2003
12 p.m. to 3 p.m.

City of Pittsburg Council Chambers

12:00 Welcome and Introductions. Meeting attendees introduced themselves. Coordination Group members in attendance were:

Chris Barton, City of Pittsburg
Bradley Brownlow, Morrison & Foerster
Mike Daley, Sierra Club, Bay Chapter
Abby Fateman, CCC Community Dev.
Janice Gan, CA Dept of Fish and Game
Jim Gwerder, CCC Citizens Land Alliance
Barry Hand, City of Oakley
John Kopchik, CCC Community Dev.
Sheila Larsen, U.S. Fish and Wildlife
Kathy Leighton, Byron MAC
Suzanne Marr, U.S. EPA

Brad Olson, EBRPD
Mark Seedall, CCWD
John Slaymaker, Greenbelt Alliance
Nancy Thomas, CCRCD
Donna Vingo, CLLA
Dick Vrmeer, CNPS
Mike Vukelich, CCC Farm Bureau
Carl Wilcox, CA Dept of Fish & Game
Scott Wilson, CA Dept of Fish & Game
David Zippin, Jones & Stokes, Inc.

Also in attendance: John Hopkins, Institute for Ecological Health and
David Fowler, EBA

12:05 Review and approve Draft Meeting Record of the April 17, 2003 Coordination Group meeting. Draft meeting record was approved without changes.

12:10 Briefly recap written comments received on Preliminary Draft Conservation Strategy and Alternatives. Copies of these comments will be available at the meeting. Written comments from Mike Daley, Jim Gwerder, John Hopkins and John Slaymaker were distributed and reviewed. David Zippin briefly discussed the neighboring landowner protection topic, including the latest news from San Joaquin County.

12:30 Review revised draft Framework document edited to reflect discussion at April 17, 2003. The Draft Framework document was reviewed by the Coordination Group. Comments were heard from Mike Vukelich and Sheila Larsen. Mike's written comments and concerns will be discussed further in the Agriculture Subcommittee. Sheila stated that some of the Principles of Participation (which are included in the Framework for reference) are problematic for USFWS. She referred to principles that require USFWS to commit to x or y up front as examples. Janice Gan concurred from Fish and Game perspective. John Kopchik suggested that perhaps the inclusion Principles as reference within the Framework was no longer useful—the Framework is intended to grow into a consensus document all can accept while the Principles were a statement of expectations made by the local agencies and in some instances were written to be heard by USFWS and were not written in a way to facilitate adoption by USFWS. Members were generally agreeable to removing the Principles from within the text and moving them to attachment. Bradley Brownlow asked that the Principles be referenced to the Framework and that, ultimately, comments on their status also in the HCP/NCCP also be included in

the attachment. Bradley and Jim Gwerder asked Sheila Larsen if she could more specific at an upcoming meeting as to what objections USFWS might have to the Principles as it would be important to know that sooner rather than latter. Sheila agreed.

1:00 Presentation by Jim Gwerder on proposed land use plan developed for Byron area by the Byron Municipal Advisory Council. Jim discussed the process and products of the land use plan for the Byron area and explained how this related to the permit area question.

1:15 Permit area workshop:

- **Criteria for a good permit area (participants were and are encouraged to review the preliminary criteria collected earlier and to come to the meeting with specific suggested additions and edits—see earlier criteria list attached)**
- **Relation to other policies and policy discussions**
- **Presentation of Flowchart/Menu for Framing permit Area Alternatives (attached)**
- **Presentation on biological implications of permit area alternatives**
- **Discuss and attempt to frame alternative permit area scenarios**

David Zippin distributed a spreadsheet and a map that outlined his views on the conflicts between the three different impact scenarios and the preliminary conservation strategy. He reviewed the spreadsheet, scenarios, and maps. John Kopchik presented and explained the Flowchart/Menu for Framing Permit Area Alternatives.

2:50 Confirm upcoming meeting dates. Upcoming Coordination Group meetings are scheduled as follows for the City of Pittsburg Council Chambers (usually 3rd Thursdays):

Thursday, June 19, 1 p.m. to 3 p.m.

Thursday, July 17, 1 p.m. to 3 p.m. (tentative)

(Executive Governing Committee scheduled to meet June 19, 5:30 p.m- 7 p.m..)

2:55 Public comment. None

3:00 Adjourn.

EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)

DATE: June 19, 2003
TO: HCPA Coordination Group (CG)
FROM: John Kopchik
SUBJECT: Overview of Outcomes of the Ag. Subcommittee Meeting on May 27, 2003

The Coordination Group Agriculture Subcommittee met May 27 at 1 p.m. at the County Admin. Building in Martinez. Attendees included:

Mike Vukelich, Contra Costa County Farm Bureau
Sheila Larsen, USFWS
John Slaymaker, Greenbelt Alliance
Jim Gwerder, Contra Costa Citizens' Land Alliance
Janice Gan, California Department of Fish and Game
Dick Vrmeer, California Native Plant Society
Tom Bloomfield, CCC Resource Conservation District (Director)
John Hopkins, Institute for Ecological Health
Brad Olson, East Bay Regional Park District
John Kopchik, Contra Costa County

The group reviewed their mandate and launched into a productive (I thought) discussion of the following topics (from the meeting agenda):

- 1) Agricultural productivity and the conservation strategy
- 2) Permit coverage for agricultural activities (and the ag. exemption topic raised by Mike)
- 3) Neighboring landowner protections
- 4) Conservation easements vs. fee simple
- 5) Other agricultural issues relating to the HCP/NCCP
- 7) Discuss any next steps and/or subcommittee reports to the full Coordination Group

The group reviewed existing programs in place to protect agricultural lands and/or protect/promote agricultural operations:

- Ag. Core Designation in County General Plan (40 acre minimum for future subdivisions)
- Urban Limit Line (prevents county from permitting development on lands outside ULL)
- Right To Farm Ordinance (protects farmers from requests by new residential neighbors to curtail ag operations)
- Williamson Act (tax reductions for property owners willing to agree not to develop for a predefined period)
- Rural Residential Development policies of County GP (various restrictions on "ranchettes")

- Agricultural Trust of Contra Costa County (seeks to conserve farmland; \$500K in start-up funds from Keller landfill)
- Brentwood Agricultural Land Trust (formed by Brentwood to purchase and conserve Ag land near Brentwood; \$2M in account already from developer impact fees)
- Various state and federal programs could provide funding (new US Farm Bill, CA Farmland Conservancy Program, etc.)

Regarding the question of permit coverage for agricultural activities, the subcommittee developed the following table to provide context for making a decision on this:

Type of Ag. Activity	Needs Endangered Species Permit Now?	Consider Covering in HCP?
Conversion of ag → houses	yes	yes
Build one barn	Maybe (depends...)	
Change crops (i.e. corn→grapes)	No	Little need
Range → vineyard	Sometimes (depends on location)	More need
Range → other irrigated crops		
Range → horticulture		

* Agriculturalists on the subcommittee felt range conversion of any significant scale was unlikely due to lack of water and incompatible soils in existing rangeland areas.

The subcommittee did also reach consensus on the following substantive points:

- Plan should strive for helping to keep grazing viable, both as an economical agricultural activity and as a necessary habitat conservation/management tool
- The Conservation Strategy should not assume that non-purchased ag. Lands will stay the way they are now (current draft doesn't presume this)
- Plan should leave options open vis-à-vis use of easements vs. fee simple purchases, but economic analysis should be conservative given lack of history of easement purchases
- Revised Conservation Strategy should reduce goals for conservation of irrigated/intensively cultivated ag land. There are other conservation actions that can be performed to benefit species that use ag lands and restrictions that would likely be required of such conserved lands could conflict with goals for improving the economic viability of agriculture generally.



Memorandum

Date: June 3, 2003

To: East Contra Costa County HCP Association
c/o John Kopchik

cc:

From: David Zippin, Jones & Stokes

Subject: **Recent Activity by U.S. Fish and Wildlife Service**

This memorandum provides an update on recent activity at the U.S. Fish and Wildlife Service (USFWS) regarding species listings and critical habitat designations and explains how this recent activity affects the East Contra Costa County HCP/NCCP process.

California Tiger Salamander

On May 23, the USFWS published a proposed rule listing the California tiger salamander (CTS) as threatened within the Central California Distinct Population Segment (DPS). CTS is listed as endangered in Sonoma and Santa Barbara Counties (two other DPSs). USFWS proposes to down-list these populations to threatened. USFWS will make their final decision to list or not within about a year. During the review process, the Central California DPS of CTS is not protected under the Endangered Species Act (ESA).

USFWS is proposing a special rule under Section 4(d) of the ESA, which gives them the authority to exempt certain activities from the take prohibitions of the ESA. USFWS proposes to exempt "routine ranching practices" from take prohibitions for CTS because these practices are either neutral or beneficial for the species. They propose defining routine ranching practices as:

1. Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland,
2. control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (use of toxic gases is not exempt)
3. control and management of burrow complexes using discing and grading to destroy burrows and fill openings in areas less than 10 acres within any one-quarter section,
4. routine management and maintenance of stock ponds and berms to maintain livestock water supplies at levels present at the time of the listing of CTS (introduction of exotic species that may prey on CTS into stock ponds is not exempt).

In this proposed rule, USFWS states their intention not to designate critical habitat for CTS when the final rule is published due to their severe staff shortages. USFWS states that recent critical

June 3, 2003

Page 2

habitat designations made in response to lawsuits and court orders have diverted their resources away from the substantial backlog of other work such as listing decisions.

The California tiger salamander is a covered species in our HCP/NCCP. We have assumed in the HCP/NCCP that the CTS could be listed in the near future, so if it does become listed, it would not affect the plan. The preliminary draft conservation strategy for the East Contra Costa County HCP/NCCP is consistent with the proposed 4(d) rule proposed by USFWS. The routine ranching practices numbers 2 (poisoning) and 3 (discing) exempted for CTS under the 4(d) rule would not be allowed within preserve lands established under the HCP/NCCP.

Midvalley Fairy Shrimp

On April 29, the USFWS published a notice in the Federal Register that they are initiating a status review of the midvalley fairy shrimp, which is currently not listed. This status review is in response to a petition to list the species as an endangered on an emergency basis. The USFWS declined to emergency list the species but has initiated a 90-day review of the status of the species. We expect the USFWS at the end of this period to propose listing this species as either threatened or endangered under the ESA. Through this process, this species could be listed as early as June 2004.

The East Contra Costa County HCP/NCCP includes the midvalley fairy shrimp as a covered species because we expected this species to become listed during either the planning process or during the term of the permit. We have been treating the species as if it were listed. Listing the species should therefore have no effect on the HCP/NCCP.

Critical Habitat Designations

On April 24, the USFWS published proposed revised critical habitat designations for the California Gnatcatcher, a small bird that occurs in coastal sage scrub habitat in southern California. This proposed revision was in response to several lawsuits filed after critical habitat was first designated in 2000. This rule, if adopted, will set an important precedent for HCPs around the United States. The proposed revisions to California Gnatcatcher critical habitat exclude the proposed reserves of approved regional HCPs. The USFWS concluded that the complex regional HCPs in southern California already addressed the requirements that would have been introduced by a critical habitat designation, so the designation was unnecessary. The USFWS also concluded that the benefits of excluding critical habitat in these areas outweighed the benefits of designating critical habitat. For example, USFWS believed that excluding critical habitat from these areas would "relieve landowners, communities, and Counties of any additional regulatory burden that may result solely from such a designation." USFWS also believed that by excluding critical habitat from HCP reserve areas, it would increase their ability to develop and maintain partnerships with state and local agencies, conservation organizations, and private landowners.

It is unclear how this rule may affect the East Contra Costa County HCP/NCCP. Critical habitat designations for two HCP/NCCP covered species, California red-legged frog and Alameda whipsnake, were withdrawn earlier this year pending further economic analysis. If the USFWS redesignates critical habitat for these species after the East Contra Costa County HCP/NCCP is approved, there may be an opportunity to exclude the proposed HCP/NCCP preserves. USFWS proposed critical habitat for vernal pool fairy shrimp and longhorn fairy shrimp on September 24, 2002. Both of these species are proposed for coverage in the HCP/NCCP. The final rule on critical habitat for these species will likely be published this summer or fall. This is well before the HCP/NCCP is expected to be approved, so critical habitat will likely overlap with future HCP/NCCP preserves.

There is an important difference, however, between the southern California HCPs and the East Contra Costa County HCP/NCCP. Land acquisition in the southern California HCPs is based largely on hard boundaries of proposed reserves (i.e., the location of future reserves is certain or nearly certain). In contrast, the land acquisition process for the East Contra Costa County HCP/NCCP, as currently written, is a more flexible process. The location of future reserves is much less certain than is the case for southern California. This may pose challenges for USFWS in excluding critical habitat from the East Contra Costa County HCP/NCCP Preserve System.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN ASSOCIATION (HCPA)**

DATE: June 19, 2003
TO: HCPA Coordination Group (CG)
FROM: John Kopchik
SUBJECT: Update on efforts to integrate wetlands permitting in the HCP/NCCP

Integrating wetlands permitting into the HCP/NCCP has always been a key goal of the HCPA's planning efforts, and we have recently been taking small but hopefully productive steps forward in this regard.

We have been working with five other regional conservation planning efforts in Northern California to pursue Congressional funding for developing our plans (Placer, Sacramento, Santa Clara, Solano, and Yolo Counties). In pursuing our combined request to Congress, the six conservation planning efforts involved discovered a shared goal of/concern over integration of wetlands permits with endangered species permits. We raised this issue in a meeting with Steve Thompson, the U.S. Fish and Wildlife Service's (USFWS) top administrator for this part of the country, and he invited us to present on this topic at a joint meeting of top administrators from USFWS (including Mr. Thomson), the U.S. Army Corps of Engineers (including General Davis from the Southwest Division and Colonels McCormick and Conrad from the San Francisco and Sacramento Districts), and the California Department of Fish and Game (including Mr. Hight, Director of the Department of Fish and Game).

Staff representing the HCPA and the other efforts in other counties explained our perceptions of the advantages of integrating wetlands in HCPs, discussed the obstacles encountered thus far in doing so, and requested that: 1) the Army Corps attempt to provide staff to attend meetings of individual conservation planning efforts; 2) that a working group be established to identify feasible approaches for integrating wetlands and endangered species. While those involved expressed concern over lack of budget for staff, our requests did receive a generally positive verbal response. We are working now to follow-up on the meeting and to set-up the working group. A copy of the follow-up letter sent by the six planning efforts is attached.

Northern California Regional Conservation Planning Funding Partners

May 23, 2003

Dear Colonel Conrad and Field Supervisor White:

**East Contra Costa
County HCP/ NCCP**

**Placer County
HCP/ NCCP**

**South Sacramento
County HCP**

**County of
Santa Clara**

**Solano
HCP / NCCP**

**Yolo County
HCP/ NCCP**

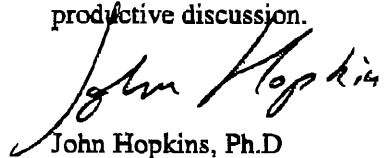
We would like to express our thanks to the Corps and the Service for the opportunity to address the April 29th Corps - U.S. Fish and Wildlife Service 7th Partnering Session and to discuss our interest in integrating permitting under Section 404 of the Clean Water Act and regional Habitat Conservation Plans.

We are most appreciative of your willingness to hold a short series of meetings to discuss these issues. By assembling key individuals from the Corps, the Service, and the six counties, we believe these meetings will offer a real opportunity to make progress on identifying feasible alternatives for addressing 404 permitting in parallel with the HCP process. Since several of the conservation planning efforts are well under way, it would be a great help to hold these meetings at your earliest convenience. We hope that it will be possible to have an initial meeting in June, then three additional meetings in subsequent months.

We have discussed potential agenda items among ourselves and look forward to working with you to plan an initial meeting. Our thoughts regarding the initial meeting include the consideration of objectives, the Corps' needs, the background for each of the conservation plans, and some initial discussion of the permitting options. We will be happy to attend to the logistics of the meetings.

We will contact you by phone within the next several days to discuss initiating our planning. Should you have any questions or need to contact us, we suggest you do so through John Hopkins (530-756-6455; ieh@cal.net), the coordinator for our six county coalition.

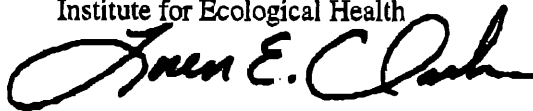
Thank you again for your willingness to participate in what we trust will be a productive discussion.



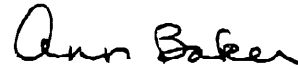
John Hopkins, Ph.D
Funding Partners Coordinator
Institute for Ecological Health



John Kopchik
Contra Costa County/East
Contra Costa County Habitat JPA



Loren E. Clark
County of Placer



Ann Baker
Sacramento County



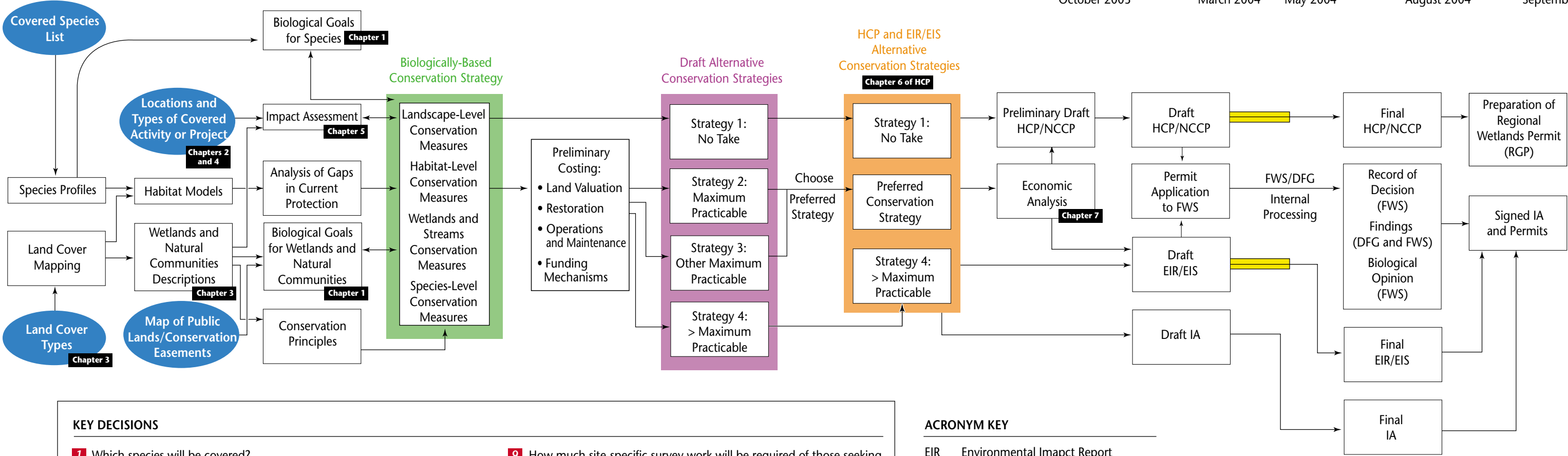
John Bencomo
County/Cities of Yolo JPA



David B. Okita
Solano County Water Agency

Process, Schedule, and Key Decision Points for the
East Contra Costa County HCP/NCCP

KEY DECISIONS



KEY DECISIONS

- 1 Which species will be covered?
- 2 What activities will be covered?
- 3 How will covered activities impact covered species?
- 4 What ecological principles should guide conservation?
- 5 What area will be covered by the permit (perhaps different areas for different activities)?
- 6 What conservation measures are necessary to receive permit(s)?
- 7 Should conservation easements or fee simple purchases be used to protect habitat (or both)?
- 8 Should the plan be map-based or policy based? (i.e., should the plan specifically map areas targeted for acquisition)
- 9 How much site-specific survey work will be required of those seeking permits through the HCP? (e.g. wetland delineations, species surveys)
- 10 How much will the plan cost to implement?
- 11 What assurances can be provided to landowners near preserves created by HCP?
- 12 How will implementation be funded?
- 13 What agency(s) will hold the permit and implement the plan?
- 14 What is the adaptive management plan? What implementation assurances shall be provided to involved parties? What are the protocols for amending the plan/permit?
- 15 How long will the permit last?

ACRONYM KEY

- EIR Environmental Impact Report
- EIS Environmental Impact Statement
- FWS U.S. Fish and Wildlife Service
- DFG California Department of Fish and Game
- HCP Habitat Conservation Plan
- IA Implementation Agreement
- RGP Regional General Permit
- NCCP Natural Community Conservation Plan

- Start
- Public Review Period

PRELIMINARY DISCUSSION DRAFT OUTLINE

Framework for the East Contra Costa County HCP/NCCP

This document is intended to outline key components of the HCP/NCCP and serve as a focus of discussion for the Coordination Group. The document will record key recommendations of the Coordination Group as they are made. The Framework cannot replace the detailed information that will be contained in supporting documentation such as the Conservation Strategy and other chapters of the plan itself (these will continue to be discussed), but it can guide development of the more detailed work products and allow the Coordination Group to focus on the most important policy questions.

The Principles of Participation approved by HCPA member agencies upon joining the HCPA (County version is used as a starting point) are included as an attachment. The Principles have been referenced to the section of this Framework that discusses the relevant subject matter.

Contents

- I Purpose of the HCP/NCCP
- II Background: The Intersection of Natural Resources, Development, and Agriculture in East County
- III Mechanism: the HCP/NCCP as an Alternative to Project-By-Project Permitting and Mitigation
- IV Key Permit Terms and Conditions
- V Biological Commitments
- VI Landowner Commitments
- VII Implementing Entity
- VIII Funding to Implement HCP/NCCP
- IX Regulatory Assurances
- X Amendment

I Purpose of the HCP/NCCP

Mission statement (below) recommended by Coordination Group on 5-17-02 and approved by the Executive Governing Committee on 5-23-02.

The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan will provide comprehensive species, wetlands and ecosystem conservation and contribute to recovery of endangered species within East Contra Costa County, while:

- balancing open space, habitat, agriculture, and urban development;

- reducing the cost and increasing the clarity and consistency of federal and state permitting by consolidating and streamlining these processes into one, locally-controlled plan,
- encouraging, where appropriate, the multiple use of protected areas, including recreation and agriculture,
- sharing the costs and benefits of the habitat conservation plan as widely and equitably as possible, and
- protecting the rights of private property owners.

II Background: The Intersection of Natural Resources, Development, and Agriculture in East County

Language below was adapted from a grant application, is still somewhat rough, and should be refined over time. .

Eastern Contra Costa County is one of the fastest growing regions in the state--with a population that is predicted to grow by 127,000 people by 2025¹--providing important new housing for the Bay Area's growing workforce. Though efforts are underway to direct future growth toward infill opportunities (to the maximum extent practicable) and to finding more sustainable ways to grow, existing land use plans and development approvals allow significant new development on rangelands and irrigated crop lands. This new development will displace a variety of natural habitats, including valley floor and foothill grassland, oak woodland, oak woodland savannah, chaparral, riparian woodland, emergent wetland, and vernal pool habitat. Anticipated growth could also threaten key habitat corridors needed to protect a variety of state and federally listed threatened and endangered species. Approximately 154 special status species occur or could occur in the East County area, including the San Joaquin Kit Fox, California Red-Legged Frog, Alameda Whipsnake, Golden Eagle, Western Burrowing Owl, Vernal Pool Fairy Shrimp, and Diablo Helianthella. The East County area is also home to productive agricultural lands, including intensively cultivated areas with high quality soils in lower elevations and productive grazing lands in the hills that cover a large part of the region. Agriculturalists depend on these lands for income and as an important investment.

Conflict between these different land-uses or community values is, to some extent, unavoidable. However, coordinated conservation planning is an opportunity to reduce the level of conflict and to uncover mutually acceptable approaches to these problems.

¹ ABAG, Projections 2002. By 2025, the populations of Brentwood, Oakley, Pittsburg, and Antioch are expected to grow by 123%, 57%, 52%, and 30%, respectively.

III Mechanism: the HCP/NCCP as an Alternative to Project-By-Project Permitting and Mitigation

This is excerpted from an old staff report and is too long, but again provides an example of the kind of information that could be included here.

Current Process for Complying with Endangered Species Acts and Other Resource Protection Regulations:

Public agencies, developers, and other project sponsors currently address endangered species regulations individually on a project-by-project basis. Potential impacts to endangered species are considered and potentially mitigated within the California Environmental Quality Act (CEQA) process, but in many cases must also be addressed through individual consultation with the USFWS and CDFG. Regardless of regulatory venue, endangered species compliance typically requires:

- a) thorough field surveys of the site at appropriate times for endangered species;
- b) negotiations on mitigation, site design, and construction practices; and
- c) identification and procurement of any needed off-site mitigation and/or dedication of on-site mitigation (e.g., open space easements) and establishment of mitigation monitoring program.

The above compliance is performed individually by the landowner/developer and the USFWS and CDFG in order to obtain an individual take permit (ITP) pursuant to CESA section 2081 and FESA section 10 when a non-federal action (i.e., project or activity) may jeopardize or impact a listed species, or its habitat. In Contra Costa County, the ITP is more often issued under section 7 of FESA which applies when a project has federal funding or requires federal permits, such as for wetlands. The local land use agency is usually not involved, but does separately negotiate mitigation under CEQA.

The amount of time and funding dedicated to each of the above three tasks varies, sometimes dramatically, from one project to another. Some project proponents in East County have incurred significant expense in this process. All project proponents must contend with some uncertainty regarding how long endangered species compliance will take, how much mitigation will be required, and what will happen in the future if unforeseen circumstances arise that affect a protected species before an ITP issued.

In addition to endangered species requirements, CEQA (and NEPA if a federal project), and any resource protection measures adopted by the local land use planning agency, project proponents must also comply with a number of other environmental regulations. For example, actions that could affect wetlands must have a thorough site survey and formal wetland delineation sanctioned by an appropriate regulatory agency. Such projects must also receive permits from the U.S. Army Corps of Engineers (COE), and the Regional Water Quality Control Board

(RWQCB). Depending on the project, the U.S. Environmental Protection Agency (EPA), USFWS, and CDFG might be involved in processing the wetlands permit from the COE. Projects affecting streams require a streambed alteration agreement with CDFG and may also be subject to wetland regulations. Construction activities require a separate permit from the RWQCB to control water quality impacts. Projects might also face local and other restrictions on impacts to prime agricultural lands.

How the HCP/NCCP's Will Provide an Alternative Process for Compliance:

The East County HCP/NCCP establishes a coordinated process for permitting and mitigating the incidental take of endangered species that can be used in place of the current, project-by-project approach. Rather than individually surveying, negotiating, and securing mitigation, project proponents typically receive an ITP by paying a fee (and/or dedicating land), performing limited surveys, and adhering to protocols to avoid and minimize impacts during construction. The fees are collected by the Implementation Entity (TBD) (often a Joint Powers Authority composed of representatives of local agencies). The Implementation Entity then uses the fee money, as well as grants and any other funding sources established in the plan, to purchase habitat lands or easements from willing sellers. Collected funds are also used for monitoring and any habitat enhancement or management actions.

The HCP/NCCP will (we hope) also offer an alternative, parallel means for complying with wetlands regulations, including the Sections 404 and 401 of the federal Clean Water Act (wetlands fill and water quality certification) and Section 1601 of the California Fish and Game Code (Streambed Alteration). The approach to complying with wetlands regulations will be similar to the approach used for endangered species compliance: coordination of off-site mitigation through the plan when impacts cannot be avoided.

A comprehensive, landscape-level analysis of the biological resources of East County forms the basis for the permits issued and conservation actions taken under the plan. By examining conservation priorities at a regional scale, the plan is better suited for implementing key conservation biology principles than more focused work with perhaps greater detail. The biological work in this plan cannot replace the site-specific biological work that will still be required under the California Environmental Quality Act for specific projects, but it can provide a broader scientific context, assist with evaluating cumulative impacts, and should facilitate both the preparation and review of future site-specific studies.

HCP/NCCP's are intended to benefit developers by improving regulatory certainty, by reducing the need for surveys and mitigation negotiations, and by providing a coordinated, more cost effective system for acquiring mitigation. HCP/NCCP's are also intended to benefit species by replacing the current project-by-project mitigation with a coordinated system more suitable for protecting connected blocks of habitat in a biologically sound manner. Larger and connected blocks of conserved lands will increase the potential to benefit and preserve multiple species.

IV Key Permit Terms and Conditions

Most of the information provided below has been discussed in a general way but has not been the focus of specific recommendations or decisions.

Summarized below are key aspects of the permits to be requested through the HCP/NCCP.

Term of permit: 30 years (*local agency's current working assumption*)

Permit holders: TBD (Could be the implementing entity or each individual jurisdiction (i.e., County, cities, CCWD, and the organization responsible for managing the Preserves)

Permit issuers: U.S. Fish and Wildlife Service
California Department of Fish and Game
Wetlands agencies like USACE and SWRCB and EPA (we hope)

Desired permits:

- a) Section 10 of FESA (Incidental Take Permit under Section 10 of the Federal Endangered Species Act) (see badly formatted species lists below)

Species to be covered by the permit:

Townsend's Western Big-eared Bat
San Joaquin Kit Fox
Tricolored Blackbird
Golden Eagle
Western Burrowing Owl
Swainson's Hawk
Silvery Legless Lizard
Alameda Whipsnake
Giant Garter Snake
California Tiger Salamander
California Red-legged Frog
Foothill Yellow-legged Frog
Longhorn Fairy Shrimp
Vernal Pool Fairy Shrimp
Midvalley Fairy Shrimp
Vernal Pool Tadpole Shrimp
Mount Diablo Manzanita
Brittlescale
San Joaquin Speerscale
Big Tarplant
Mount Diablo Fairy Lantern
Recurved Larkspur
Diablo Helianthella
Brewer's Dwarf Flax
Showy Madia
Adobe Navarretia

No-Take Species (Extremely Rare Plants and Fully Protected Species)

Common Name	Status		Rationale
Scientific Name	State	Federal	
Plants			
Large-flowered fiddleneck <i>Austrochloa grandiflora</i>	SE	FE	No natural populations occur in the inventory area; if one were discovered, it would be highly significant and should be preserved.
Alkali milkvetch <i>Astragalus tener</i> var. <i>tener</i>	IB	-	Thought to be extirpated from Contra Costa County; suitable habitat may be present in the inventory area; if any populations are found, they would have to be preserved.
Mount Diablo buckwheat <i>Eriogonum fasciculatum</i>	IA	-	Presumed extinct; if any populations were discovered in the inventory area, they would have to be preserved.
Diamond-petaled poppy <i>Echeolobelia rhombipetala</i>	IB	-	Known from only two populations in the world; not seen in the inventory area since 1889. Any populations found in the inventory area would be highly significant.
Contra Costa goldfields <i>Lasthenia conjugens</i>	IB	FE	All known populations in inventory area have been extirpated; if new populations were discovered, they would have to be preserved.
Cape-fruited tropicdaisy <i>Tropidocarpum caperidium</i>	IA	-	Presumed extinct; historic occurrence in the inventory area; if discovered, population would have to be preserved.
Birds			
White-tailed Kite <i>Elaenia leucurus</i>	FP	-	No take is allowed because species is fully protected.
Peregrine Falcon <i>Falco peregrinus</i>	FP	-	No take is allowed because species is fully protected.
Golden Eagle <i>Aquila chrysaetos</i>	FP	BGPA	No take is allowed because species is fully protected.
Legend:			
State:		State	
Federal:		SE	State Listed as Endangered
FE		ST	State Listed as Threatened
FT		CSC	California Special Concern Species
PSC		SR	State Rare (plants)
BGPA		FP	Fully Protected
		California Native Plant Society	
		IA	Presumed Extinct
		IB	Rare or Endangered in California and Elsewhere

- b) Section 2835 of CESA (Incidental Take Permit under the California Endangered Species Act through provisions of the California Natural Community Conservation Planning Act)
- c) Section 1601 (Master streambed alteration agreement under the California Fish and Game Code)
- d) Section 404 of CWA (Regional General Permit under Section 404 of the Federal Clean Water Act)
- e) Section 401 of CWA (Water Quality Certification from the State Water Resources Control Board)

Permit area: TBD (preliminary Impact Analysis begins this discussion)

The permit area criteria we began to outline on March 20 perhaps belong here once we have pursued that discussion a bit further.

Covered activities:

Below please find a DRAFT of the covered activities list reflecting the Coordination Group discussion through its August 15, 2002 meeting:

Discussion Draft of Covered Activities List²

1. Residential, commercial, and industrial development (and other development activities, such as described in items 2 thru 4, inside the Urban Limit Line)
2. Road and highway construction and maintenance outside the ULL
3. Water infrastructure construction and maintenance outside the ULL
4. Flood control project construction and maintenance outside the ULL
5. Sanitary system infrastructure construction and maintenance
6. Rural recreational facility construction, maintenance, and operation
7. Recreational use of rural parks and preserves
8. Mining facility construction, operation, and maintenance (if requested by mining companies)
9. Miscellaneous development outside the ULL (to be defined later)
10. Population surveys, species relocation, habitat restoration, management, and scientific research on preserve lands or potential preserve lands
11. Clearing, grading, or filling of natural communities for new irrigated agriculture (if requested by agricultural community)
12. On-going operations of existing agriculture (if requested by agricultural community)
13. Wind turbines to be discussed later

Voluntary participation: participation principle #12 needs to be articulated more fully here

² The introductory text on this subject should explain the difference between Section 7 and Section 10 of the Federal Endangered Species Act and make clear that, while an HCP can only provide coverage under section 10, HCPs can be an instrument for identifying permit conditions under Section 7.

V Biological Commitments

This section is clearly still a work in progress. Several comments were made on March 20 that seem appropriate for including here as we start to fill this section out. It is tempting to just put a note here that says “see Conservation Strategy”, though that would defeat the purpose this document. Suggest culling key principles from the Preliminary Draft Conservation Strategy as we proceed. Could reference aspects of NCCP requirements here. Also, comments from past Coordination Group meetings, such as the importance of small scale features and the importance of not forgetting about such features even though many activities to protect such resources would be deferred to implementation could be recorded here.

Qualitative Conservation Requirements:

The conservation strategy will be designed to meet the biological goals and objectives of the plan. The strategy will be based on four fundamental regulatory goals: mitigate the impacts to the covered species to the maximum extent practicable, contribute to the recovery of the covered species, maintain ecosystem processes, and conserve biological diversity.

- Conservation dollars must be spent efficiently and effectively.

Conservation easements may be an effective tool in this regard, though the funding strategy for the plan should not assume that such transactions will be as common as they might be in an ideal situation. Conservation easements have not been common in this area in the past and factors that have limited their use may continue to be limiting in the future.

- Habitat restoration should be included in the conservation strategy for habitats that have historically been lost or degraded such as riparian woodland, seasonal wetlands, and native grasslands.
- Habitat restoration should only occur within HCP/NCCP Preserves except in cases where there are no restoration opportunities within the new preserves. If restoration must occur outside preserves, it will occur only on public lands adjacent to or near HCP/NCCP preserves and in direct support of these preserves (e.g., along the same stream).
- The plan will include “stay ahead” provisions to ensure that land acquisition and restoration occurs ahead of development. The plan will also include a “jump start” provision to ensure that the implementing entity acquires and begins to restore some land before any impacts occur.

Preserve Design Principles*

Maximum Size
 Minimize the Number of Preserve Units
 Link Preserves
 Include Urban Buffer
 Minimize Edge
 Maximize Environmental Gradients
 Consider Watersheds
 Consider Full Ecological Range of Communities
 *See the Conservation Strategy for a description of each of these principles

- Agriculture can be compatible with conservation. Many agricultural activities, such as grazing, will be critical for maintaining and restoring habitat values in some areas.
- The impacts of development close to the proposed HCP/NCCP Preserves will be minimized through the use of planning surveys (as described in the conservation strategy), creation of buffer zones, and more intensive management along the urban-wildland interface. The plan assumes that minimization measures will not be required for most species in isolated areas such as urban infill.
- Development will not take “no take” species (see Key Permit Terms and Conditions)
- HCP/NCCP Preserves will conserve biological resources at all scales including small-scale features such as rock outcrops, native grassland vegetation associations, seeps, springs, and other features determined to be important to native biological diversity.
- The plan will contribute substantially to the recovery of the Alameda whipsnake despite relatively low impacts to this species because the inventory area includes such a large proportion of this species’ entire range (approximately 20%).
- The implementing entity will acquire and manage land in key areas to maintain connectivity between Contra Costa County and neighboring counties to support landscape-level ecological functions such as the long-term survival of the San Joaquin kit fox in Contra Costa County.
- Recreational use of HCP/NCCP Preserves will be limited to areas and types of uses that have negligible impacts on covered species and habitats.
- All relevant elements of this plan will be monitored in the field to ensure that the biological goals and objectives will be achieved and to inform the on-going adaptive management process.
-

Quantitative Conservation Requirements:

- Pending (the types of tables we might put here are shown below)

Land Acquisition Requirements for Terrestrial Land Cover Types (acres)							
	Total in Inventory Area	Inside Public Lands (%)	Outside Public Lands	Estimated Impact ¹ (% of Outside)	Available in Zones ²	HCP/NCCP Preservation Requirement for Compensation and Recovery ³ (% of Zone)	Minimum Preserved ¹ (% of Remaining)
Annual grassland							
Alkali grassland							
Oak savanna							
Oak woodland							
Chaparral/scrub							
Cropland and pasture							
Total							

A table that shows land acquisition requirements by habitat type would be an appropriate insert here.

VI Landowner Commitments

This section still needs more work, though several comments were made on March 20 that seem appropriate for including here as we start to fill this section out. Likewise, the work of the Agricultural Subcommittee has generated material for this section and should continue to do so.

Fundamental assurances:

- The plan should respect and protect the rights of property owners.
- All land or easements purchased by the implementer of the plan must be from willing sellers. Eminent domain cannot be used.
- The plan should assume that agricultural lands not purchased for conservation will not necessarily continue to be operated and to function as they do now.

Neighboring landowner assurances:

- The plan must consider the interests of property owners adjacent to HCP/NCCP Preserves. Such land owners should be offered assurances that any proliferation of endangered species on the Preserves will not hinder their existing operations (i.e., beyond conditions before the Preserves are established).
- Questions to be worked out: “opt-in” vs. “opt-out” (i.e., whether all neighboring lands are automatically covered and landowners can choose to opt out, or whether all neighboring lands must choose to receive protection) and how the pre-preserve baseline of endangered species is established

Financial assurances:

- HCP/NCCP fees and other funding sources must fully fund the cost of land acquisition and maintenance, but must not be so high as to discourage development.
- The plan should provide the option of purchasing either conservation easements or fee title, but, given the limited use of easements in this area to date, the economic analysis should be fiscally conservative and assume that easement purchases will be rare.
- The plan will operate in and affect the local real estate market. This role must be undertaken sensitively to avoid significant disruptions of the private marketplace.

Agricultural assurances:

- The plan should contribute to keeping grazing viable, both as an economical agricultural activity and as a necessary habitat and species management tool.
- Lands conserved for habitat may constitute an increasingly significant portion of the agricultural resource in the area. Land management practices must maximize the compatibility of agriculture with conservation, avoid all unnecessary restrictions of agricultural operations, and generally support the viability of agriculture in East County.
- The plan will include a provision to allow for a transfer of agricultural conservation easements to lands with equal or greater biological value to allow for flexibility in future agricultural operations

VII Implementing Entity

No detailed work to date on this topic, but this section should describe what body will be responsible for implementing the HCP/NCCP, what entity will be responsible for acquiring and managing the land (could be the same, or the overall implementation authority could delegate or contract for such responsibilities), what responsibilities are assigned to the implementing authority, etc.

VIII Funding to Implement HCP/NCCP

This section should summarize how much the plan will cost to implement and how this will be funded. The cost estimate should be broken down by acquisition, restoration, management, monitoring, and administration. Fund raising aspect should include information on the amount of the fee on new development seeking permits through the plan and details on other funding sources and the amount of revenue to be generated through each of these. The preliminary land valuation memo and the funding sources memo have draft background information on these topics.

IX Regulatory Assurances

This section will summarize & expand on key assurances such as described in principles 6 and 7.

No Surprises Assurances:

- The permittees will obtain “No Surprises” assurances so that the implementing entity will not be responsible for additional land, water, money, or other restrictions beyond that provided in the plan for any unforeseen circumstances or changed circumstances not provided for in the plan.
- The unlisted covered species are addressed in the plan as if they were listed, so if the unlisted covered species are listed in the future, the permit will be amended to include these species with no additional mitigation requirements.
- The plan should not impose costs of any contingent mitigation on private property owners. However, the plan may include inflation corrections in the mitigation fee, different fees for different types of impacts, and assurances that funding keeps pace with habitat protection benchmarks established in the plan.

IX Amendment

Not sure we will want to keep such a section in this framework, but I thought it might be useful to think in these terms because consideration of the amendment process may help us balance the desire to resolve all issues in the plan with the need to maintain some flexibility over the long term.